THE HON'BLE SRI JUSTICE C.V. RAMULU

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+W.P.No.9540 of 2005

%Dated 10-8-2007

Between:

'Preet Comforts' rep. by its
Prop. Smt. Tarlochan Kaur,
Shop No.15, Hardy Commercial
Complex, M.G.Road, Opp:Chermas,
Secunderabad ..... Petitioner

and

The Commissioner for Workmen's
Compensation at Eluru
and others ….. Respondents

!Counsel for the petitioner : SHRI A. SUDERSHAN REDDY

^Counsel for Respondents: SHRI G.S. SANGHI
SHRI A. RAMALINGESWARA RAO
SHRI K. INDRASENA REDDY
GP FOR LABOUR

<GIST:

> HEAD NOTE:

? Cases referred

1. AIR 1965 Mysore 306
2. AIR 2000 Karnataka 344
3.1989 ACJ 896

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Friday, the 10th day of August,2007

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ORDER:

This Writ Petition is filed seeking a Mandamus declaring the Order of the 1st respondent passed in W.C.No.52/99 dated 30-1-2003 and also the Order dated 13-12-2004 in Review Petition No.WC.MP.7/2003, WC.MP.8/2003, WC.MP.9/2003 and WC.MP.10/2003 as arbitrary, illegal and without jurisdiction.

It appears, petitioners are the Management of Preeti Comforts and Preeti Engineers. Respondents 3 and 4 are the parents of the deceased- Tanuku Vijaya Durga Santa Vara Prasad, who was an employee of the petitioners. While he was travelling during the course of employment in a train, died due to train accident. It appears, parents of the deceased Vara Prasad filed a claim petition in O.A.A.No.104 of 1999 before Railway Claims Tribunal, Secunderabad against the 2nd respondent. The Railway Claims Tribunal, after full trial passed an Award dated 11-6-1999 directing the 2nd respondent to pay a sum of Rs.1,50,000/- each to respondents 3 and 4. Thereafter, respondents 3 and 4 have also filed W.C.No.52 of 1999 on the file of the 1st respondent claiming compensation of Rs.4.00 lakhs before the 1st respondent. According to the petitioners, respondents 3 and 4

suppressed the factum of Award made by the Railway Claims Tribunal in O.A.A.No.104 of 1999 and filed W.C.No.52 of 1999 and the same was ordered directing them to deposit Rs.2,18,270/- towards compensation payable to respondents 3 and 4 by way of a Demand Draft drawn in favour of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Eluru, within 30 days from the date of receipt of the said Order. Thereafter, petitioners filed a petition in WC.MP. No.7/2003 to review the Order dated 30-1-2003, WC.MP.No.8/2003 to send Exs.A9,A15 and signatures on Vakalatnama, counter affidavit deposition and fresh signatures for reference to handwriting expert for verification, WC.MP.No.9/2003 to mark Exs.R1 to R18 i.e. attendance register for the period from April,1998 to December,1998 and wage register for the period from April,1998 to December,1998 and WC.MP.No.10/2003 to stay the Proceedings including depositing of the amount of Rs.2,18,470/- pending disposal of the review petition. All the petitions were dismissed on 13-12-2004 on the ground that the Judgments relied upon by the petitioners are not applicable and further under Section 6 of the Workmen's Compensation Act, the Authority is not vested with the power to review its own order. Challenging the said Order, the present Writ Petition is filed.

Learned counsel for the petitioners strenuously contended that firstly the very petition in W.C.No.52 of 199 is not maintainable in view of Section 128 of the Railways Act,1989. Secondly, assuming that such a petition is maintainable, in view of the fact that respondents 3 and 4 have already availed remedy under the Railways Act and claimed compensation before the Tribunal, they are not entitled to claim compensation under the Workmen's Compensation Act, which amounts to claiming compensation more than once, in respect of the

same accident. In a case of this nature, even the review petition is maintainable; therefore, dismissal of review petition is arbitrary and illegal. In this regard, the learned counsel relied upon a judgment reported in **SMT. ZAIBUNNISA v. DIVISIONAL SUPERINTENDENT, SOUTHERN RAILWAY**[1] and submitted that two claims are not maintainable in respect of the same accident.

Per contra, learned counsel for respondents 3 and 4 strenuously contended that the very Writ Petition is not maintainable. If for any reason, the petitioners are aggrieved by the Order made by the Authority under the Workmen's Compensation Act in W.C.No.52 of 1999, dated 30-1-2003, they could have filed an appeal as available under Section 30 of the said Act; instead of doing that, petitioners have filed review petition, which is not maintainable and the Authority has rightly dismissed the same as not maintainable. Further, Section 128 of the Railways Act does not affect the right of any person to recover compensation payable under the Workmen's Compensation Act,1923, who has a right to claim compensation under Section 124 of the Railways Act. The Writ Petition is devoid of any merit and is liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and gone through the impugned Orders and other material made available on record.

The facts are not in dispute. Respondents 3 and 4 have claimed compensation under Section 124 of the Railways Act before the Railway Claims Tribunal, Secunderabad in O.A.A.No.104 of 1999, which was disposed of on 11-6-1999 awarding a sum of Rs.1,50,000/- each to respondents 3 and 4. Respondents 3 and 4 also filed W.C.No.52 of 1999, after passing of the Award passed by the Tribunal,

i.e. on 15-7-1999. Thus, it has to be seen as to whether under Section 128 of the Railways Act, there is any prohibition for filing two claim petitions before different authorities claiming compensation in respect of the same accident. In this regard, it is relevant to note Section 128 of the Railways Act, which reads as under:

> "**128. Saving as to certain rights:--** (1) The right of any person to claim compensation under Section 124 shall not affect the right of any such person to recover compensation payable under the Workmen's Compensation Act,1923, or any other law for the time being in force; but no person shall be entitled to claim compensation more than once in respect of the same accident.
>
> (2) Nothing in sub-section (1) shall affect the right of any person to claim compensation payable under any contract or scheme providing for payment of compensation for death or personal injury or for damage to property or any sum payable under any policy of insurance".

A plain reading of the above provision would indicate that a right of a person to claim compensation under Section 124 or Section 124-A shall not affect the right of such person to recover such compensation payable under the Workmen's Compensation Act or any other law for the time being in force, but no person shall be entitled to claim compensation more than once in respect of the same accident. Sub-section (2) of Section 128 contemplates that the said sub-section (1) shall not affect the right of any person to claim compensation under any contract or scheme provided for payment of compensation for death or personal injury or for damage to property or any sum payable under any policy of insurance i.e. other than the compensation payable under the Workmen's Compensation Act,1923.

A plain reading of Sub-sections (1) and (2) of Section 128 of the Act would make it clear that a person can claim compensation either under Section 124 or under Section 124-A of the Railways Act or under the Workmen's Compensation Act,1923 or any other law for the

time being in force, but no person shall be entitled to claim compensation more than once in respect of the same accident. Admittedly, in this case, the accident is only one. But, the claims were made before the Railway Claims Tribunal at Secunderabad as well as before the Authority under the Workmen's Compensation Act,1923, one after the other. Even a reading of Section 167 of the Motor Vehicles Act would indicate that when a claim arises under the said Act and under the Workmen's Compensation Act, the person entitled to claim compensation may claim compensation only under either of these Acts and not under both the Acts. Similar analogy has to be adopted in this case also.

It is unfortunate that the 1st respondent-Commissioner for Workmen's Compensation, Eluru recorded a finding as under:

> "……But this case is entirely different. The applicants filed their claim in Railway Tribunal as per the insurance scheme promulgated after the cited case law as per the assurance given by the Railway Board in the House. Any person, who met with accident in Railway can file this claim. For filing this claim, employer and employee relationship is not essential. The bar of filing two different claims is for employee employed for whom the above enactments are enacted. The applicants of this case filed their claim under the Insurance scheme of Indian Railways but not as parents of employee of the Railway. Had they filed the claim as parents of Railway employee, definitely they are not entitled to claim compensation against before this Tribunal. Hence, this claim is entirely different from the citations referred by the O.Ps……..."

The said observations of the 1st respondent have no basis whatsoever. Respondent No.1 proceeded on the footing that the deceased was not an employee of the Railways and therefore, respondents 3 and 4 herein can maintain a claim petition under the Workmen's Compensation Act as well as before the Railway Claims Tribunal. Thus, the claim petition filed before it, is maintainable. This is a misconception. The law is very clear in this regard, as noticed

above.

Further, it is the contention of the learned counsel for respondents 3 and 4 that a Writ Petition, in this shape, is not maintainable and instead of filing a regular appeal under Section 30 of the Act, petitioner filed the present Writ Petition. In this regard, I am of the opinion that though strictly speaking, an appeal is available, but *ex facie* the claim for compensation under the Workmen's Compensation Act, particularly, after the Order and Decree passed by the Railway Claims Tribunal is illegal, filing of such a Writ Petition is maintainable, since it required interpretation of Section 128 of the Act.

In **SMT. ZAIBUNNISA** case (1 supra) it was held that compensation in respect of the same accident cannot be claimed once again under any other Act including the Workmen's Compensation Act,1923. However, learned counsel for respondents 3 and 4 drawn attention to paragraph-18 of the said Judgment, wherein it was held at para-18:

> "…….It is also not necessary for us to express, any opinion, on the question whether compensation under the Workmen's Compensation Act could have been claimed, if Hussainsab had not been a railway employee. I should also add that in support of the argument that the deceased Hussainsab filled two roles, one as a passenger and another as employee of the railway administration, no foundation was laid before the Commissioner for Workmen's Compensation."

There is no necessity of going into the Judgments relied upon by the learned counsel for the respondents reported in **L.SRIDHAR v. UNION OF INDIA**[2] and **UNION OF INDIA v. RAM DEVI**[3]. The very reading of the provisions of Section 128(1) would amply make it clear that a claim petition can be filed for the death and/or injuries of an individual suffered in a railway accident either before the Railway Claims Tribunal or before the Authority under the Workmen's

Compensation Act. In this case, admittedly, the deceased was an employee of the petitioners herein and he died while in service (while travelling in a train) in a train accident. Respondents 3 and 4 – parents of the deceased - have already claimed compensation under Section 124 of the Act. May be, that the right of respondents 3 and 4 to claim compensation under the Workmen's Compensation Act is not debarred under the Workmen's Compensation Act, but nonetheless, they cannot claim compensation under both the Acts in respect of the same accident. In a given case, particularly of this nature, where two claims have been filed, one before the Railway Claims Tribunal and the other before the Authority under the Workmen's Compensation Act and both the claims were allowed, it is always open for respondents 3 and 4 to opt for any one of them, which is beneficial to them. In this case, admittedly, respondents 3 and 4 were awarded a compensation of Rs.1,50,000/- each by the Railway Claims Tribunal, whereas under the Workmen's Compensation Act, a total compensation of Rs.2,18,470/- was granted.

Accordingly, the Writ Petition is disposed of. No order as to costs.

10-8-2007

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[1] AIR 1965 Mysore 306

[2] AIR 2000 Karnataka 344

[3] 1989 ACJ 896